

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

13

DECISION

**TOPIC Notice of Intended Action - Amendments to Chapter 135, Technical
Standards and Corrective Action Requirements for Owners and Operators
of Underground Storage Tanks**

The Department presents these rules for Notice of Intended Action by the Commission in order to satisfy the requirements of the Iowa Act and the Federal Act

The Department proposed and the Iowa Legislature passed legislation (SF 499/HF792) (Iowa Act) this session granting rulemaking authority to the Commission in response to provisions of the Federal Energy Act of 2005 (Federal Act). The Federal Act requires States to implement several policies consistent with EPA issued guidance in order to maintain Federal funding and the Department's "state program approval" for the UST program. The Iowa Act requires the Commission to adopt rules requiring that all new underground storage tank (UST) and piping installations and replacements after August 1, 2007 be constructed to provide secondary containment (i.e. double walled tanks and piping) if they are within 1,000 feet of any public water supply system or a potable drinking water well. The Iowa Act also requires that "under dispenser containment) systems be installed whenever dispensers are replaced. The Iowa Act requires the Commission to adopt rules implementing a process to prohibit the delivery of fuel to UST facilities which are determined to be out of compliance with designated operation and maintenance requirements such as release detection, overfill and spill protection and corrosion protection.

Elaine Douskey, Supervisor
Underground Storage Tanks Section
Environmental Protection Division

June 12, 2007

ENVIRONMENTAL PROTECTION

COMMISSION[567]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission proposes to amend Chapter 135, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks,” Iowa Administrative Code.

The Iowa Legislature passed legislation (SF 499/HF792) (Iowa Act) granting rulemaking authority to the Environmental Protection Commission (Commission) in response to provisions of the Federal Energy Act of 2005 (Federal Act). The Iowa Act requires the Commission to adopt rules consistent with Environmental Protection Commission (EPA) guidance (see <http://www.epa.gov/OUST/index.htm>) requiring that all new underground storage tank (UST) and piping installations and replacements be constructed to provide secondary containment (i.e. double walled tanks and piping) if they are within 1,000 feet of any public water supply system or a potable drinking water well. The Iowa Act also requires that "under dispenser containment" systems be installed whenever dispensers are replaced.

The Iowa Act requires that all UST system new and replacement installations after August 1, 2007 comply with EPA secondary containment guidance until Commission rules are adopted. The department recommends that owners and operators comply with these proposed rules to meet the terms of the Iowa Act until the rules are adopted.

The rules require secondary containment for all new underground storage tank and piping installations and replacements unless an exception can be proved by the tank owner. Most sites with an underground storage tank system provide water on-site and will be within 1,000 feet of water supply system or potable drinking water well, Exceptions from having to install secondary containment will be rare.

The replacement of piping with secondary containment is required when over 10 feet of piping is replaced. Under dispenser containment is required any time a dispenser is replaced along with changes in piping under the dispenser, or piping is replaced within 10 feet of the dispenser.

The Iowa Act requires the Commission to adopt rules consistent with EPA guidance to authorize a mechanism to prohibit the delivery of regulated substances to USTS that are out of compliance with operation and maintenance rules. The EPA guidance requires states to adopt rules which at a minimum establish (1) criteria for determining under what conditions USTS would be subject to a delivery prohibition; (2) mechanisms to identify USTS which could be subject to the delivery prohibition; (3) criteria under which the delivery prohibition can be removed; (4) processes to provide adequate procedural due process such as prior notice before imposition of the delivery prohibition and (5) processes and criteria to identify USTS which could be exempted from the delivery prohibition if they are in rural or remote areas. The department has determined there are no remote or rural areas where access to a petroleum marketing facility is unavailable even in the event of a delivery prohibition.

The amendments propose to broaden the existing UST registration and annual tank management fee tagging system to require owners and operators to certify compliance with spill and overfill, release detection and corrosion protection rules. Potential out of compliance USTS would also be identified through the biennial third party compliance inspections and department facility inspections.

The amendments establish three levels of criteria for determining non-compliance sufficient to warrant imposition of the delivery prohibition. Each level provides the owner and operator with a greater degree of due process in the form of prior notice and opportunity to challenge the basis for the delivery prohibition. UST facilities may be designated as operating under "provisional" status if found to have a pattern of violations. Owners and operators would be offered a remedial plan and if they fail to satisfy the terms of the plan, would then be subject to the delivery prohibition after notice and an opportunity for a contested case hearing. This remedy is in addition to other enforcement mechanisms such as issuance of orders and assessment of penalties.

Owners and operators subject to the prohibition shall be required to return to the department any registration tag or current annual tank management fee tag within three days. If the tags are not returned, the department will attach a "red tag" to the UST fillpipe. It is illegal for an owner or operator to accept or for a person to deposit fuel into an UST without current tags or with a "reg tag".

Any interested person may submit written comments on the proposed amendments on or before Friday, August 24, 2007. Written comments should be sent to the Iowa Department of Natural Resources, Attn: Paul Nelson, Wallace State Office Building, Des Moines, Iowa 50319; fax (515)281- 8895; or E-mail paul.nelson@dnr.state.ia.us.

Three public hearings will be held at the following locations:

August 21, 2007 Iowa City Public Library
1 p.m. 123 S Linn Street
. Iowa City, Iowa

August 22, 2007 Community Meeting Room
1 p.m. Denison City Hall Clerk's Office
 111 N Main St
 Denison, Iowa

August 23, 2007 Wallace State Office Building
1 p.m. Fifth Floor Conference Room East
 502 East Ninth Street
 Des Moines, Iowa

Any person who intends to attend a public hearing and has special requirements such as those related to hearing or mobility impairments should contact Paul Nelson at (515)281- 8779 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.474. A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 135.1(1) as follows:

d. Deferrals. Rule 135.5(455B) does not apply to any UST system that stores fuel solely for use by emergency power generators. All new and replacement UST systems for emergency power generators must meet the secondary containment requirements in 135.3(9), including leak detection and the delivery prohibition requirements in 135.3(8).

ITEM 2. Amend 567—135.2(455B) by adding and amending following definitions:

“Appurtenances” means devices such as piping, fittings, flanges, valves, dispensers and pumps used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

“Dispenser” means equipment that is used to transfer a regulated substance from underground piping through a rigid or flexible hose or piping located aboveground to a point of use outside of the underground storage tank system such as a motor vehicle.

“Pipe or Piping” means a hollow cylinder or tubular conduit that is constructed of non-earthen materials that routinely contains and conveys regulated substances from the underground tank(s) to the dispenser(s) or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the underground tank(s) to the dispenser(s). This definition does not include vent, vapor recovery, or fill lines.

“Replace” or “replacement” means the installation of a new underground tank system or component, including dispensers, in substantially the same location as another tank system or component in lieu of that tank system or component.

“Secondary containment tank” or “secondary containment piping” means a tank or piping which is designed with an inner primary shell and a liquid-tight outer secondary shell or jacket which extends around the entire inner shell, and which is designed to contain any leak through

the primary shell from any part of the tank or piping that routinely contains product, and which allows for monitoring of the interstitial space between the shells and detection of any leak.

“Under-Dispenser Containment (UDC)” means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater. Such containment must:

- Be intact, liquid-tight on its sides, bottom, and at any penetrations;
- Be compatible with the substance conveyed by the piping; and
- Allow for visual inspection and access to the components in the containment system and be monitored.

ITEM 3. Add new subrule 135.3(9),

135.3(9) *Secondary Containment Requirements for UST System Replacement and New Installations.*

All new and replacement underground storage tank systems and appurtenances used for the storage and dispensing of petroleum products, after the effective date of these regulations, shall have secondary containment in accordance with this sub-rule. The secondary containment provision includes the installation of turbine sumps, transition or intermediate sumps and under dispenser containment (UDC).

- a. The secondary containment may be manufactured as an integral part of the primary containment or it may be constructed as a separate containment system.
- b. Installation of any new or replacement turbine pumps involving the direct connection to the tank shall have secondary containment.
- c. Any replacement of ten feet or more of piping or the replacement of piping within 10 feet of a dispenser or containment sump shall have secondary containment.
- d. All piping replacements requiring secondary containment shall be constructed with transition or intermediate containment sumps.
- e. The design and construction of all primary and secondary containment shall meet the performance standards in subrule 135.3(1), paragraph 135.5(3)"b" and paragraph 135.5(4)"g".

At a minimum the secondary containment must:

- (1) Contain regulated substances released from the tank system until detected and removed,

(2) Prevent the release of regulated substances to the environment at any time during the operational life of the underground storage tank system.

(3). Be checked for evidence of a release at least every 30 days as provided in paragraph 135.5(2)"a".

f. Secondary containment with interstitial monitoring in accordance with 135.5(3)"b", 135.5(4)"g" and 135.5(5)"d" shall become the primary method of leak detection for all new and replacement tanks and piping installed after the effective date of these regulations.

g. Testing and inspection. Secondary containment systems shall be liquid tight and must be inspected and tested every two years.

(1) Inspections for secondary containment sumps (spill catchment basins, turbine sumps, transition or intermediate sumps and under dispenser containment) shall:

1. Consist of a visual inspection by an Iowa licensed installer or Iowa certified inspector every two years. Sumps must be intact (no cracks or perforations) and liquid tight including sides and bottom).

2. Sumps must be maintained free of debris, liquid and ice at all times.

3. Regulated substances spilled to any spill catchment basin, turbine sump, transition/intermediate sump or under-dispenser containment shall be immediately removed.

(2) Sensing devices used to monitor the interstitial space shall be tested at least every two years for proper function.

h. Under-Dispensers Containment. When installing a new motor fuel dispenser or replacing a motor fuel dispenser, under-dispenser containment (UDC) shall be installed providing:

(1) A motor fuel dispenser is installed at a location where there previously was no dispenser (new underground storage tank system or new dispenser location at an existing underground storage tank system), *or*

(2) An existing motor fuel dispenser is removed and replaced with another dispenser and the equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes unburied flexible connectors or risers or other transitional components that are beneath the dispenser and connect the dispenser to the piping. UDC is not required when only the emergency shutoff or shear valves or check valves are replaced.

(3) Whenever piping is repaired or replaced within 10 feet of a motor fuel dispenser, UDC shall be installed beneath the motor fuel dispenser.

i. Exceptions from secondary containment standards. A tank owner or operator may request an exception from the secondary containment standard if the location of the UST system is greater than 1,000 feet from a Community Water System (CWS) or Potable Drinking Water Well. Community water system includes the distribution piping.

(1) A Community Water System (CWS) is defined as a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. A public water system is defined as “A system for the provision to the public of water for human consumption through pipes or, other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public water system is either a “community water system” or a “non-community water system.”

(2) A Potable Drinking Water Well is defined as any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities. A "non-community water system is defined in 567-40.2 as a public water system that is not a community water system. A non-community water system is either a "transient noncommunity water system (TNC) or "non transient noncommunity water system (NTNC).

(3) To determine if a new or replaced underground tank or piping or new motor fuel dispenser system is within 1,000 feet of any existing community water system or any existing potable drinking water well, at a minimum the distance must be measured from the closest part of the new or replaced underground tank or piping or new motor fuel dispenser system to:

1. The closest part of the nearest existing community water system, including:
 - The location of the wellhead(s) for groundwater and/or the location of the intake point(s) for surface water;
 - Water lines, processing tanks, and water storage tanks; and
 - Water distribution/service lines under the control of the community water system operator.
 2. The wellhead of the nearest existing potable drinking water well.
- (4) If a new or replacement tank piping or motor vehicle dispenser will be installed that is not within 1,000 feet of any existing community water system and a community water system is planned or a permit application has been submitted to the Department under 567-chapter 40 that will be within 1,000 feet of the UST system, secondary containment and under-dispenser containment are required unless the permit is denied.
- (5) If a new or replacement UST system or motor vehicle dispenser will be installed that is not within 1,000 feet of any existing potable drinking water well and the owner will be installing a potable drinking water well at the new facility or a private water well permit has been submitted pursuant to 567-chapter 38 and applicable county and municipal ordinances for a potable drinking water well that will be within 1,000 feet of the UST system, secondary containment and under-dispenser containment are required unless the permit is denied.
- i. Documentation for exception from secondary containment.* The following documentation must be provided by the tank owner or operator when requesting exception from the UST system secondary containment requirement.
- (1) Statement from manager of local community water system that the community water system is not located or planned within 1,000 feet of the UST system location. This would include rural water systems.
 - (2) A map showing homes and businesses within 1,000 feet of the UST system location.
 - (3) Identification of the source of water for the business at the UST location.
 - (4) Results of an on-foot search around businesses and homes within a 1,000 foot radius for possible potable drinking water wells. Documentation that there are no pending non-public water well permit applications within 1,000 feet of the UST system from any applicable

municipal permitting authority, county department of health with department delegated authority or the department if there is not delegated permitting authority...

(5) Search results from the Geographic Information System (GIS) well mapping for well locations available from through Iowa Geological Survey.

(6). Documentation that the department water supply section has no pending applications for a public water supply construction permit within a 1,000 feet of the proposed UST system installation, replacement or dispenser replacement.

ITEM 4. Amend paragraph 135.5(4)“g” and subparagraph (1) as follows:

g. Interstitial Monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used , but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product.

(1) For secondary containment systems, the sampling or testing method must be able to detect a release through the inner wall in any portion of the tank that routinely contains product;

1. Continuously, by means of an automatic leak sensing device that signals the operator of the presence of any regulated substance in the interstitial space; or

2. Monthly, by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space.

(2) The interstitial space shall be maintained free of liquid, debris or anything that could interfere with leak detection capabilities.

Note: The provisions outlined in the Steel Tank Institute’s “Standard for Dual Wall Underground Storage Tanks” may be used as guidance for aspects of the design and construction of underground steel double-wall tanks.

ITEM 5. Add new paragraph 135.5(5)“d”

d. *Interstitial Monitoring of secondary containment.* Interstitial monitoring may be used for any piping with secondary containment designed and capable of interstitial monitoring.

(1) Leak detection shall be conducted:

1. Continuously, by means of an automatic leak sensing device that signals the operator of the presence of any regulated substance in the interstitial space or containment sump; or

2. Monthly, by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space or containment sump, such as visual inspection.

(2) The interstitial space or sump shall be maintained free of water, debris or anything that could interfere with leak detection capabilities.

(3) At least every two years, any sump shall be visually inspected for integrity of sides and floor and tightness of piping penetration seals. Any automatic sensing device shall be tested for proper function.

ITEM 6. Amend rule 135.3 by adding the following new sub-rule:

135.3(8) *Delivery Prohibition Process,*

a. Identifying Sites subject to Delivery Response Prohibition Action.

(1) *Annual registration tag and tank management fee process.* Owners and operators shall certify to the following on a form prepared by the department when applying for annual tank tags pursuant to 135.3(5):

1. Installation and performance of an approved UST and piping release detection method as provided in 135.5, including annual line tightness test and line leak detector test if applicable.

2. Installation of an approved overfill and spill protection system as provided in 135.3(1) "c".

3. Installation of an approved corrosion protection system as provided in 135.3(1)"a" & "b".

4. If the USTS have been out of operation for more than three months, that the USTS have been properly temporarily closed in accordance with 135.15 and a certification of temporary closure has been submitted to the department.

5. If the USTS have been removed or filled in place within the last twelve months, the date of removal, and whether a closure report has been submitted as provided in 135.15.

(2) *Sites with Provisional Status.* If the UST facility has been classified as operating under provisional status as provided in 135.3(8)(b)(3), the owner and operator when applying for annual tank tags pursuant to 135.3(5) must certify on a form prepared by the department that they are in compliance with an approved provisional status remedial plan as provided in 135.3(8)(b)(3).

(3) *Compliance Inspections.* The department may initiate a delivery prohibition response action based on (1) a finding by a third party compliance inspection conducted pursuant to 135.20 (2) a department investigation and inspection conducted pursuant to Iowa Code section 455B.475 or (3) review of UST system check or other documentation submitted in response to a suspected release under 135.6 or in response to a confirmed release under 135.7.

b. Delivery Prohibition Eligibility Criteria. A delivery prohibition response action may be initiated upon a finding that the UST system is out of compliance with department rules and meets the eligibility criteria under three general sets of standards: level one, level two and provisional status. Reinstatement criteria is established which will allow for resumption of fuel delivery. Each set of criteria establishes the minimum degree of procedural due process, such as prior notice and the opportunity to present facts to dispute the finding, afforded owners and operators prior to initiation of a delivery prohibition response action. Reinstatement criteria defines the standards and process for owners and operators to document that they have taken corrective action sufficient to resume delivery of fuel. Where notice and the opportunity to take corrective action prior to initiation of a delivery prohibition response action is required, notice by the department or by a compliance inspector as provided in 135.20 shall be sufficient.

(1) Level one criteria. If the department finds that the following criteria has been satisfied, the department may initiate a delivery prohibition response action following the notice procedures outlined in paragraph "c". After initiation of the delivery response action, the department will offer the owner or operator an opportunity to establish reinstatement criteria by written documentation and if requested an in person meeting.

1. A qualified release detection method for USTS or UST piping is not installed such as automatic tank gauging, groundwater monitoring wells and line leak detectors and there is no record that a qualified method such as qualified inventory control, statistical inventory reconciliation, or interstitial space monitoring has been employed during the previous 3 months. If the owner or operator claims to have documentation that an approved release detection method has been conducted, the owner will be given two business days to produce the documentation.

- Reinstatement criteria. The owner or operator must submit results of a passing UST system precision tightness test at the 0.1 gal/hour standard in 135.5(4)"c" and 135.5(5)"b". They must also document installation and operation of an approved

release detection system. This may include proof that a contract has been signed with a qualified statistical inventory reconciliation provider or that a qualified inventory control method has been implemented and training has been provided to onsite supervisory personnel.

2. No documentation of a required annual line tightness test or line leak detector test and failure to conduct the required testing within 14 days of written notice by the department or a compliance inspector as provided in 135.20.

- Reinstatement criteria. Documentation of a passing line precision tightness test at the 0.1 gal/hour standard in 135.5(5)"b" and a line leak detector test as provided in 135.5(5)"a".

3. Overfill and spill protection not installed.

- Reinstatement criteria. Documentation that overfill and spill protection equipment has been installed.

4. Corrosion protection system is not installed or there is no record that an impressed current corrosion protection system has been in operation for the prior six months.

- Reinstatement criteria. A manned entry tank integrity inspection must be completed prior to installation of a corrosion protection system and a UST system precision tightness test at the 0.1 gal/hour standard in 135.5(4)"c" and 135.5(5)"b". A corrosion protection analysis must be completed and approved by the department.

5. Failure to provide proof of financial responsibility in accordance with chapter 567-136.

- Reinstatement criteria. Submittal of acceptable proof of financial responsibility in accordance with 567--chapter 136.

(2) Level two criteria. If the department finds that the following criteria has been satisfied, the department may initiate a delivery prohibition response action following the notice procedures outlined in paragraph "c". After initiation of the delivery response action, the department will offer the owner or operator an opportunity to establish reinstatement criteria by written documentation and if requested an in person meeting.

1. A qualified UST system release detection method is installed and is being performed but the documentation or the absence of documentation is sufficient to question the reliability of the release detection over the past 12 month period. The owner and operator shall be notified of the

deficiencies, given at least two business days to produce documentation of compliance and if necessary required to conduct a leak detection system analysis and a system tightness test within 14 days. If the owner or operator fails to produce documentation of compliance or conduct the system analysis and the UST system precision tightness test at the 0.1 gal/hour standard in 135.5(4)"c" and 135.5(5)"b", the department may initiate a delivery prohibition response action. Notice by the department or a compliance inspector as provided by 135.20 shall be sufficient to initiate a delivery prohibition response action.

- Reinstatement criteria. The owner or operator must submit documentation that the leak detection method analysis sufficiently documents compliance and explains the reasons for the accuracy and reliability concerns; or if necessary, submit passing results of an UST system precision tightness test at the 0.1 gal/hour standard in 135.5(4)"c" and 135.5(5)"b".

2. Failure to document completion of a 3-year corrosion protection test or to repair defective corrosion equipment completed within 30 days after notice of the violation by the department or a compliance inspector as provided in 135.20.

- Reinstatement criteria. The owner or operator must submit documentation of a 3-year corrosion protection test as provided in 135.3.

3. Failure to complete a compliance inspection required by 135.20 within sixty (60) days after written notice of the violation by the department.

- Reinstatement criteria. The owner and operator must submit a compliance inspection report as provided in 135.20.

4. Failure to take necessary abatement action in response to a confirmed release as provided in 135.7(2) and (3).

- Reinstatement criteria. Documentation of compliance with the abatement provisions in 135.7(2) and (3).

5. Failure to undertake and document release investigation and confirmation steps within seven days in response to a suspected release as provided in 135.6(3)"a".

- Reinstatement criteria. Documentation of release confirmation and system check under 135.6(3)"a".

(3) Provisional Status. The department may classify an UST facility as operating under a provisional status when the department documents a pattern of UST operation and maintenance violations under 135.3 through 135.5 and suspected release and confirmed release response actions under 135.6 and 135.7. The department shall provide the owner or operator with a notice specifying the basis for the proposed classification and a proposed remedial action plan. The objective of the remedial action plan is to provide the owner and operator an opportunity to undertake certain remedial actions sufficient to establish a reasonable likelihood that future regulatory compliance will be achieved.

The remedial action plan may include but is not limited to provisions for owner/operator training, development of a facility specific compliance manual, more frequent third party compliance inspections than otherwise required under 135.20, monthly reporting, and retention of a third party compliance manager/consultant. If the owner or operator is unwilling or the department and the owner or operator cannot reach agreement on a remedial plan, the department may initiate enforcement action by issuance of an administrative order pursuant to 567-Chapter 10. This provision does not grant the owner or operator an entitlement to this procedure and the department reserves all discretion to undertake an enforcement action and assess penalties as provided in Iowa Code sections 455B.476 and 455B.477.

(4) Administrative Orders. The department may impose a delivery prohibition as a remedy for violations of the operation and maintenance provisions in 135.3-5 and the suspected and confirmed release response actions in 135.6 and 135.7. This remedy may be in addition to the assessment of penalties as provided in Iowa Code section 455B.476 and other appropriate injunctive relief necessary to correct violations.

c. Delivery Prohibition Response Action.

(1) Level One Finding. Prior to imposing a delivery prohibition response action, the department will provide actual notice to the owner or operator, or if notice to the owner or operator cannot be confirmed, a person in charge at the UST facility of the basis for the finding and the intent to initiate a delivery prohibition response action. Actual notice may be by oral contact or by certified mail to the UST facility address. The owner and operator will be given at least one business day to provide documentation that the finding is inaccurate or that reinstatement criteria as been satisfied.

If no information is submitted to change the finding, the department will notify the owner or operator and a person in charge at UST facility of the final decision to impose the delivery prohibition response action.

(2) *Level Two Finding.* Prior to imposing a delivery response action, the department will provide the owner and operator, or if the owner or operator cannot be contacted, a person in charge at the UST facility with oral and written notice by certified mail to the UST facility address or the last known address of the owner or operator stating the department's intent to impose a delivery prohibition response action, the basis for the finding and the applicable reinstatement criteria. The notice shall give the party at least two full business days from the date of receipt of a written notice to contest the factual basis for the finding by submission of additional documentation and if requested, an in-person conference or telephone conference.

If there is no response or after conducting the conference the department is satisfied the finding is factually accurate, the department will notify the owner and operator of the finding and initiate the delivery prohibition response action.

(3) *Provisional Status.* Upon a finding that an owner or operator under provisional status has failed to comply with the terms of a remedial action plan as provided above, the department may initiate a delivery prohibition response action by giving actual notice to the owner or operator of the basis for the finding of non-compliance and the department's intent to initiate a delivery prohibition response action. The delivery prohibition response action shall not be imposed without providing the owner and operator the opportunity for an evidentiary hearing consistent with the provisions for suspension and revocation of licenses under 567-chapter 7.

(4) *Delivery prohibition procedure.* Upon oral or written notice that the delivery response action as been imposed, the owner and operator and any person in charge of the UST facility shall be notified that they are not authorized to receive any further delivery of regulated substances until they satisfy conditions for reinstatement of eligibility. Owners and operators are required to immediately remove and return to the department the current annual tank management fee tags or tank registration tags if there are no tank management fee tags. Owners and operators are required to provide the Department the names and contact information for all persons who convey or deposit regulated substances to the USTS. The Department will attempt to notify known persons who convey or deposit regulated substances to the USTS that they are

not authorized to deliver to the USTS until further notice by the Department as provided in 135.3(3)"j" and 135.3(5).

If the tank tags are not returned within 3 business days, the department shall visit the site and remove the tag and affix a "red tag" to the fill pipes or fill pipe caps of all affected USTS. It is unlawful for any person to deposit or accept a regulated substance into an UST that has a "reg tag" affixed to the fill pipe or fill pipe cap. The department may allow the owner and operator to dispense and sell the remainder of existing fuel unless it determines there is an immediate risk of a release or other risk to human health, safety or the environment. The department shall confirm in writing the basis for the delivery prohibition response action, contacts made prior to its initiation and actions the owner or operator must take to reinstate fuel delivery

ITEM 7. Amend paragraph 135.3(3)"j" as follows:

j. It is unlawful for a person to deposit or accept a regulated substance in an underground storage tank that has not been registered and issued permanent or annual tank management tags in accordance with rule 567—135.3(455B). It is unlawful for a person to deposit or accept a regulated substance into an underground storage tank if they have received notice that the underground storage tank is subject to a delivery prohibition or there is a "reg tag" attached to the UST fill pipe or fill pipe cap as provided in 567-135.3(8).

(1) The department may provide written authorization to receive a regulated substance when there is a delay in receiving tank tags or at new tank installations to allow for testing the tank system.

(2) The department may provide known depositors of regulated substances lists of underground storage tank sites that have been issued tank tags, and those that have not been issued tank tags and those subject to a delivery prohibition pursuant to 135.3(8). These lists do not remove the requirement for depositors to verify that current tank tags are affixed to the fill pipe prior to delivering product. Regulated substances cannot be delivered to underground storage tanks without current tank tags or those displayed a delivery prohibition "reg tag" as provided in 135.3(8).(3) A person shall not deposit a regulated substance in an underground storage tank after receiving written or oral notice from the department that the tank is not covered by an approved form of financial responsibility in accordance with 567—Chapter 136.

ITEM 8. Amend paragraph 135.3(5) "d" as follows:

d. A person who conveys or deposits a regulated substance shall inspect the underground storage tank to determine the existence or absence of a current registration tag, a current annual tank management fee tag or a delivery prohibition "reg tag" as provided in 135.3(8). If the tag is not affixed to the fill pipe or fill pipe cap or a delivery prohibition "red tag" is displayed, the person may not deposit the substance in the tank.

Administrative Rule Fiscal Impact Statement

Date: 6/11/2007

Agency: Iowa Department of Natural Resources

IAC Citation: 567-Chapter 135

Agency Contact: Paul Nelson

Summary of the Rule: The rule changes require secondary containment and under dispenser containment when installing or replacing new underground storage tank systems within 1,000 feet of water supply system or potable drinking water well. The replacement of piping with secondary containment is required when over 10 feet of piping is replaced. Under dispenser containment is required any time a dispenser is replaced along with changes in piping under the dispenser, or piping is replaced within 10 feet of the dispenser.

Rules are also being adopted to prohibit the delivery of regulated substances to USTS that are out of compliance with operation and maintenance rules.

Fill in this box if the impact meets these criteria:

☒ No Fiscal Impact to the State.

☐ Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.

☐ Fiscal Impact cannot be determined.

Brief Explanation: The change in requirements does not cause any additional need for staff time.

Fill in the form below if the impact does not fit the criteria above:

☐ Fiscal Impact of \$100,000 annually or \$500,000 over 5 years.

* Fill in the rest of the Fiscal Impact Statement form.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY _____)</u>	<u>Year 2 (FY _____)</u>
Revenue by Each Source:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
TOTAL REVENUE	_____	_____
Expenditures:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
TOTAL EXPENDITURES	_____	_____
NET IMPACT		
<p><input checked="" type="checkbox"/> This rule is required by State law or Federal mandate. <i>Please identify the state or federal law:</i> The 2007 Iowa Legislature passed legislation (SF 499/HF792) granting rulemaking authority to the Environmental Protection Commission (Commission) in response to provisions of the Federal Energy Act of 2005.</p> <p><input type="checkbox"/> Funding has been provided for the rule change. <i>Please identify the amount provided and the funding source:</i></p> <p><input type="checkbox"/> Funding has not been provided for the rule. Please explain how the agency will pay for the rule change:</p>		
<p><i>Fiscal impact to persons affected by the rule:</i> There will be an increase in cost to owners and operators installing new underground storage tanks and piping that ordinarily would not install tanks and piping with secondary containment. The increased cost for single wall to a double wall tank is approximately \$2,100 for glasteel tanks (steel tank with fiberglass coating) and \$18,500 for fiberglass tanks.</p> <p> In fiscal year 2006 at sites for new and replacement tanks installed, 52% of the tanks were double wall and 82% of the piping was double wall. Double wall piping generally has under dispenser containment.</p>		
<p><i>Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):</i></p> <p> There will be an increase in cost to counties and local governments installing new underground storage tanks and piping that ordinarily would not install tanks and piping with secondary containment. The increased cost for single wall to a double wall tank is approximately \$2,100 for glasteel tanks (steel tank with fiberglass coating) and \$18,500 for fiberglass tanks.</p> <p> In fiscal year 2006, the 7 new tanks and lines installed by local governments had secondary containment.</p>		
<p>* If additional explanation is needed, please attach extra pages.</p>		
<p>Agency Representative preparing estimate: Paul Nelson Telephone Number: 515-281-8779</p>		

